

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Terry Michael Wilmore, #17739,)	C/A No. 3:11-408-JFA-JRM
)	
Petitioner,)	
)	
vs.)	ORDER
)	
Warden, Perry Correctional Institution,)	
)	
Respondent.)	
_____)	

The *pro se* petitioner, Terry Michael Wilmore, brings this action pursuant to 28 U.S.C. § 2254 challenging his 1995 state court conviction and life sentence for murder and firearm charges.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation wherein he opines that the petition is successive and the petitioner has not received permission from the Fourth Circuit Court of Appeals to file a successive § 2254 petition. The Magistrate Judge recommends dismissal of the action without prejudice. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The petitioner was advised of his right to file objections to the Report and Recommendation, which was entered on the docket on March 16, 2011. Petitioner filed timely objections wherein he essentially raises the same arguments contained in his petition.

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

Petitioner's first § 2254 petition filed in this federal district court in 2002 challenged his state court conviction for murder. *See Wilmore v. State of South Carolina*, C/A No. 3:02-182-17BC. As the petitioner has not received permission from the Fourth Circuit Court of Appeals to file a successive § 2254 petition, this court is without authority to entertain it. 28 U.S.C. § 2244 and *United States v. Winestock*, 340 F.3d 200, 205 (4th Cir. 2003) ("In the absence of pre-filing authorization, the district court lacks jurisdiction to consider an application containing abusive or repetitive claims.")

After a careful review of the record, the applicable law, the Report and Recommendation, and the petitioner's objections thereto, the court finds the Magistrate Judge's recommendation proper and incorporated herein by reference. Accordingly, this action is dismissed without prejudice as a successive § 2254 petition and without issuance and service of process.

IT IS SO ORDERED.



Joseph F. Anderson, Jr.
United States District Judge

April 12, 2011
Columbia, South Carolina